

IC 8-1-8.4

Chapter 8.4. Federally Mandated Requirements for Energy Utilities

IC 8-1-8.4-1

"Certificate"

Sec. 1. As used in this chapter, "certificate" refers to a certificate of public convenience and necessity issued by the commission under section 7(b) of this chapter.

As added by P.L.150-2011, SEC.1.

IC 8-1-8.4-2

"Compliance project"

Sec. 2. (a) As used in this chapter, "compliance project" means a project that is:

- (1) undertaken by an energy utility; and
- (2) related to the direct or indirect compliance by the energy utility with one (1) or more federally mandated requirements.

(b) The term includes:

- (1) an addition; or
- (2) an integrity, enhancement, or a replacement project;

undertaken by an energy utility to comply with a federally mandated requirement described in section 5(5) of this chapter.

As added by P.L.150-2011, SEC.1.

IC 8-1-8.4-3

"Energy utility"

Sec. 3. As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

As added by P.L.150-2011, SEC.1.

IC 8-1-8.4-4

"Federally mandated costs"

Sec. 4. (a) As used in this chapter, "federally mandated costs" means costs that an energy utility incurs in connection with a compliance project, including capital, operating, maintenance, depreciation, tax, or financing costs.

(b) The term does not include fines or penalties assessed against or imposed on an energy utility for violating laws, regulations, or consent decrees related to a federally mandated requirement.

As added by P.L.150-2011, SEC.1.

IC 8-1-8.4-5

"Federally mandated requirements"

Sec. 5. As used in this chapter, "federally mandated requirement" means a requirement that the commission determines is imposed on an energy utility by the federal government in connection with any of the following:

- (1) The federal Clean Air Act (42 U.S.C. 7401 et seq.).
- (2) The federal Water Pollution Control Act (33 U.S.C. 1251 et

seq.).

(3) The federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

(4) The federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(5) Standards or regulations concerning the integrity, safety, or reliable operation of:

(A) transmission; or

(B) distribution;

pipeline facilities.

(6) Requirements relating to a license issued by the United States Nuclear Regulatory Commission to operate a nuclear energy production or generating facility (as defined in IC 8-1-8.8-8.5).

(7) Any other law, order, or regulation administered or issued by the United States Environmental Protection Agency, the United States Department of Transportation, the Federal Energy Regulatory Commission, or the United States Department of Energy.

As added by P.L.150-2011, SEC.1.

IC 8-1-8.4-6

Necessity for public convenience and necessity certification; considerations for issuing a certificate

Sec. 6. (a) Except as provided in subsection (c), or unless an energy utility has elected to file for:

(1) a certificate of public convenience and necessity; or

(2) the recovery of costs;

under another statute, an energy utility that seeks to recover federally mandated costs under section 7(c) of this chapter must obtain from the commission a certificate that states that public convenience and necessity will be served by a compliance project proposed by the energy utility.

(b) The commission shall issue a certificate of public convenience and necessity under section 7(b) of this chapter if the commission finds that the proposed compliance project will allow the energy utility to comply directly or indirectly with one (1) or more federally mandated requirements. In determining whether to grant a certificate under this section, the commission shall examine the following factors:

(1) The following, which must be set forth in the energy utility's application for the certificate sought, in accordance with section 7(a) of this chapter:

(A) A description of the federally mandated requirements, including any consent decrees related to the federally mandated requirements, that the energy utility seeks to comply with through the proposed compliance project.

(B) A description of the projected federally mandated costs associated with the proposed compliance project, including costs that are allocated to the energy utility:

- (i) in connection with regional transmission expansion planning and construction; or
 - (ii) under a Federal Energy Regulatory Commission approved tariff, rate schedule, or agreement.
 - (C) A description of how the proposed compliance project allows the energy utility to comply with the federally mandated requirements described by the energy utility under clause (A).
 - (D) Alternative plans that demonstrate that the proposed compliance project is reasonable and necessary.
 - (E) Information as to whether the proposed compliance project will extend the useful life of an existing energy utility facility and, if so, the value of that extension.
 - (2) Any other factors the commission considers relevant.
 - (c) An energy utility is not required to obtain a certificate under this section for a project that constitutes a research and development project.
- As added by P.L.150-2011, SEC.1.*

IC 8-1-8.4-7

Application for certificate; public hearing; granting certificate; recovery of costs

Sec. 7. (a) As a condition for receiving the certificate required under section 6 of this chapter, an energy utility must file with the commission an application that sets forth the information described in section 6(b) of this chapter, supported with technical information in as much detail as the commission requires.

(b) The commission shall hold a properly noticed public hearing on each application and grant a certificate only if the commission has:

- (1) made a finding that the public convenience and necessity will be served by the proposed compliance project;
- (2) approved the projected federally mandated costs associated with the proposed compliance project; and
- (3) made a finding on each of the factors set forth in section 6(b) of this chapter.

(c) If the commission approves under subsection (b) a proposed compliance project and the projected federally mandated costs associated with the proposed compliance project, the following apply:

- (1) Eighty percent (80%) of the approved federally mandated costs shall be recovered by the energy utility through a periodic retail rate adjustment mechanism that allows the timely recovery of the approved federally mandated costs. The commission shall adjust the energy utility's authorized net operating income to reflect any approved earnings for purposes of IC 8-1-2-42(d)(3) and IC 8-1-2-42(g)(3).
- (2) Twenty percent (20%) of the approved federally mandated costs, including depreciation, allowance for funds used during construction, and post in service carrying costs, based on the overall cost of capital most recently approved by the

commission, shall be deferred and recovered by the energy utility as part of the next general rate case filed by the energy utility with the commission.

(3) Actual costs that exceed the projected federally mandated costs of the approved compliance project by more than twenty-five percent (25%) shall require specific justification by the energy utility and specific approval by the commission before being authorized in the next general rate case filed by the energy utility with the commission.

As added by P.L.150-2011, SEC.1.